Supreme Court, U.S.
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No. 97-1005

In the Supreme Court of the United States

OCTOBER TERM, 1997

VICTORIA DOYLE AND DUFFEY DOYLE,

Petitioners,

v.

VOLKSWAGEN OF AMERICA, INC., AND
VOLKSWAGENWERK AKTIENGESELLSCHAFT,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the occupant restraint system in the 1989 Volkswagen Jetta complied with the National Traffic and Motor Vehicle Safety Act and the Federal Motor Vehicle Safety Standards promulgated thereunder.

RULE 29.6 STATEMENT

Respondent Volkswagen AG (sued as Volkswagen Aktiengesellschaft (VWAG)), a corporation organized and existing under the laws of the Federal Republic of Germany, has issued shares that are traded on a public foreign exchange. Respondent Volkswagen of America, Inc., is a wholly owned subsidiary of VWAG and has issued no publicly traded shares. Other major subsidiaries and affiliates of VWAG in which it has a substantial interest include:

AUDI AG
AutoEuropa Automoveis Lda.
AUTOGERMA S.p.A.
Chinchun Motor Co., Ltd.
Coordination Center Volkswagen S.A.
Dead Sea Magnesium Ltd.
Europcar International S.A.
FAW-Volkswagen Automotive Company, Ltd.
FINGERMA S.p.A.
Groupe VOLKSWAGEN France s.a.
Seat Deutschland GmbH
SEAT, S.A.
Shanghai-Volkswagen Automotive Company Ltd.
SKODA Automobile Deutschland GmbH
SKODA, autmobilova a.s.
SkoFIN s.r.o.
Svenska VOLKSWAGEN AB
Volkswagen Argentina S.A.
Volkswagen Asia-Pacific Ltd.
Volkswagen Bank GmbH
Volkswagen Bruxelles S.A.
Volkswagen Canada, Inc.
Volkswagen Comercio e Participacoes Ltda.
Volkswagen de Mexico, S.A. de C.V.
Volkswagen do Brasil Ltda.
Volkswagen Finance Japan K.K.
VOLKSWAGEN FINANCE S.A.
VOLKSWAGEN FINANCE, S.A.
Volkswagen Financial Services (UK) Ltd.
Volkswagen Financial Services AG
Volkswagen Financial Services N.V.

Volkswagen Financial Services, S.A. de C.V.
VOLKSWAGEN Group Japan K.K.
VOLKSWAGEN Group United Kingdom Ltd.
Volkswagen International Finance N.V.
Volkswagen Investments Ltd.
Volkswagen Leasing GmbH
Volkswagen Navarra, S.A.
Volkswagen of South Africa (Pty.) Ltd.
Volkswagen Poznan Sp. z.o.o.
VOLKSWAGEN Synko GmbH
Volkswagen Transport GmbH & C.OHG
VOTEX GmbH
VW Credit, Inc.
VW-Gesellschaft fur technische
Datenverarbeitungssysteme mbH

TABLE OF CONTENTS

Page

QUESTION PRESENTED . . . . . (i)

RULE 29.6 STATEMENT ii

TABLE OF AUTHORITIES v

STATEMENT 1

REASONS FOR DENYING THE PETITION 6

CONCLUSION 10

TABLE OF AUTHORITIES

Page(s)

Cases:

American Constr. Co. v. *Jacksonville, T. & K. R. Co.*, 148 U.S. 372 (1893) 6

Brotherhood of Locomotive Firemen & Enginemen v. *Bangor & Aroostock R. Co.*, 389 U.S. 327 (1967) . . 6

Estate of Montag v. *Honda Motor Co.*, 73 F.3d 1414 (10th Cir.), cert. denied, 117 S. Ct. 61 (1996) 8

Hamilton-Brown Shoe Co. v. *Wolf Bros. & Co.*, 240 U.S. 251 (1916) 6

Martin v. *Occupational Safety and Health Review Comm'n*, 499 U.S. 144 (1991) 9

O'Bryan v. *Volkswagen of America, Inc.*, 838 F. Supp. 319 (W.D. Ky. 1992) 2, 8

Schlotz v. *Hyundai Motor Co.*, 557 N.W.2d 613 (Minn. Ct. App.), cert. denied, 118 S. Ct. 80 (1997) 8

Statutes and Regulations:

15 U.S.C. §§ 1381-1431 1

15 U.S.C. § 1391(1) 2

15 U.S.C. § 1392(a) 2

15 U.S.C. § 1392(f)(3) 2

15 U.S.C. § 1410b(b)(2) 9

15 U.S.C. § 1410b(b)(3) 9

15 U.S.C. § 1410b(f)(2) 9

49 U.S.C. §§ 30101-30169 1

49 C.F.R. § 571.208 . . . . . *passim*

TABLE OF AUTHORITIES — Continued

Pages(s)

49 C.F.R. § 571.209 . . . . . *passim*

Other Authorities:

39 Fed. Reg. 3834 (1974) 2, 8

41 Fed. Reg. 24070 (1976) 8

42 Fed. Reg. 34289 (1977) 8

49 Fed. Reg. 28962 (1984) 8

R. Stern, E. Gressman, S. Shapiro & K. Geller, SUPREME COURT PRACTICE (7th ed. 1993) 7

BRIEF FOR THE RESPONDENTS IN OPPOSITION

Petitioners seek interlocutory review by this Court of a narrow, factbound question: whether the occupant restraint system in the 1989 Volkswagen Jetta complied with the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. §§ 1381-1431 (recodified at 49 U.S.C. §§ 30101-30169) (Safety Act or Act),[1] and Federal Motor Vehicle Safety Standards (FMVSS) 208-209, 49 C.F.R. §§ 571.208-571.209. Petitioners maintain that the restraint system in the 1989 Jetta not only violated federal standards but also was defective under Georgia law, giving rise to state tort liability. They brought suit under state law against respondents Volkswagen AG and Volkswagen of America, Inc. (collectively Volkswagen).

Rejecting petitioners' arguments, both the district court and the Eleventh Circuit agreed with the expert determination by the National Highway Traffic Safety Administration (NHTSA) that the restraint system in the 1989 Jetta complied with federal law. The district court entered judgment for Volkswagen on petitioners' claims. The court of appeals, however, reversed. It held that, despite Volkswagen's compliance with federal standards, petitioners could maintain their state law claims against Volkswagen — subject to Volkswagen's federal preemption defense, which had not been decided by the district court. The court reversed the district court's judgment and remanded for further proceedings.

Petitioners now ask this Court to take the extraordinary step of intervening in this case — before the proceedings in the district court are concluded — to reconsider the complex and highly fact-bound determination of the courts below (as well as NHTSA) that the 1989 Jetta complied with federal safety standards. There is no legal question of nationwide significance presented by the petition. Indeed, petitioners offer no plausible reason to justify review by this Court of an issue that is not even dispositive of their state law claims against Volkswagen.

STATEMENT

1. Congress enacted the Safety Act in 1966 to protect the public against the "unreasonable risk of accidents occurring as a

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[1] For ease of reference we refer to the prior codification of the Safety Act, which is cited in the petition (Pet. 1) and in the opinions of the courts below (Pet. App. 3, 8, 19).

result of the design, construction or performance of motor vehicles and against [the] unreasonable risk of death or injury to persons in the event accidents do occur." 15 U.S.C. § 1391(1). It sought to accomplish this goal by authorizing the Secretary of Transportation to prescribe safety standards of nationwide applicability. Congress declared that such standards must "meet the need for motor vehicle safety" and be "reasonable" and "practicable" in their operation. *Id.* at §§ 1392(a), 1392(f)(3).

The Secretary of Transportation has delegated his authority under the Safety Act to NHTSA, which has promulgated numerous standards on motor vehicle performance and design. The Federal Motor Vehicle Safety Standards include provisions for occupant restraints, which address the "requirements for the protection of vehicle occupants in crashes" (49 C.F.R. § 571.208, S1). Standard 208 provides for "[o]ccupant crash protection" and Standard 209 governs "[s]eat belt assemblies." Pet. App. 20.

2. Petitioner Victoria Doyle was injured when the 1989 Volkswagen Jetta she was driving "was struck in the rear by another vehicle." Pet. App. 2. Petitioner's automobile was manufactured and imported into the United States by Volkswagen. *Id.* at 2, 17. Petitioner and her husband sued Volkswagen in the Northern District of Georgia, pleading several causes of action under Georgia law premised on the allegation that the "failure to include a lap belt in the [1989] Jetta caused p[etitioner] Victoria Doyle's injury." *Id.* at 17. Petitioners pleaded no federal claims for relief.

The 1989 Jetta's occupant restraint system consisted of "an automatic shoulder belt that required no action by the vehicle occupants. By design, the Jetta did not have a lap belt at the driver's or front seat passenger's position; instead, it used knee bolsters to prevent a person from sliding under the belt during a collision." Pet. App. 2. This was a fully "passive seat belt system"(Pet. 2), which NHTSA expressly determined met the occupant restraint requirements of FMVSS 208-209 without manual lap belts. 39 Fed. Reg. 3834, 3834 (1974); see *O'Bryan* v. *Volkswagen of America, Inc.*, 838 F. Supp. 319, 324 (W.D. Ky. 1992) (Volkswagen's two-point passive restraint system met requirements of NHTSA's Safety Standards). By contrast, "active"

seat belt systems require an occupant to "buckle up" and are therefore not "passive" seat belt systems.

At the time the 1989 Jetta was manufactured, FMVSS 208 did not require manufacturers to install one particular type of occupant restraint system. To the contrary, Subpart S4 of Standard 208 provided manufacturers with three design "options" for occupant restraint systems and performance requirements for each:

1. Complete passive protection for all crashes (S4.1.2.1);
2. Passive restraints for head-on crashes (S4.1.2.2); or
3. Lap and shoulder belt protection systems with belt warnings (manual three-point seat belts) (S4.1.2.3).

The second option in Subpart S4 of FMVSS 208, which was selected by Volkswagen for the 1989 Jetta,[2] protected automobile occupants "by means that require no action by [the] occupants * * *" (49 C.F.R. § 571.208, S4.1.2.2(b)). The text of option two stated:

> S4.1.2.2 *Second option—head-on automatic protection system.* The vehicle shall—
>
> (a) At each designated seating position have a Type 1 seat belt assembly or Type 2 seat belt assembly with a detachable upper torso portion that conforms to S7.1 and S7.2 of this standard;
>
> (b) At each front outboard designated seating position, meet the frontal crash protection requirements of S5.1, in a perpendicular impact, by means that require no action by vehicle occupants;
>
> (c) At each front outboard designated seating position, meet the frontal crash protection requirements of S5.1, in a perpendicular impact, with a test device restrained by a Type 1 seat belt assembly; and

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[2] Volkswagen no longer utilizes the passive occupant restraint system installed in the 1989 Jetta. In fact, since 1990, the reconfigured occupant restraint system in Volkswagen automobiles has included a fully passive safety belt system along with a manual lap belt.

(d) At each front outboard designated seating position, have a seat belt warning system that conforms to S7.3.

The Type 1 and Type 2 seat belt assemblies referred to in this option were defined in FMVSS 209 to include either lap belts or some other form of pelvic restraint. See 49 C.F.R. § 571.209.

Standard 208 further provided in Subpart S4.5.3 that "a seat belt assembly that requires no action by vehicle occupants (hereinafter referred to as an 'automatic belt') may be used to meet the crash protection requirements of any option under S4. and in place of any seat belt assembly otherwise required by that option." *Id.* at § 571.208, S4.5.3. This provision thus allowed a manufacturer to substitute a passive restraint system for the Type 1 and Type 2 seat belt assemblies defined in Standard 209. In fact, Standard 208 (§ 571.208, S4.5.3.1) stipulated that an automatic seat belt system that provided only pelvic restraint — *i.e.*, a lap belt — could not be used to comply with the "automatic belt" provisions in Subpart S4.5.3.

In sum, a manufacturer could comply with FMVSS 208 and 209 by installing passive seat belts that met the performance requirements of any of the three restraint system design options with no manually activated lap belts at all. And, as NHTSA has expressly concluded, Volkswagen's passive occupant restraint system in the 1989 Jetta fully met the requirements for the second design option in FMVSS 208.

3. Despite this regulatory history, petitioners moved for partial summary judgment in their action against Volkswagen in district court, arguing, *inter alia*, that Volkswagen violated FMVSS 208 and 209 "by not including a lap seat belt" in the 1989 Jetta. Pet. App. 17. The district court denied petitioners' motion, concluding that the passive occupant restraint system in the 1989 Jetta satisfied the requirements of Standards 208 and 209. *Id.* at 23-24.

Volkswagen also moved for partial summary judgment, arguing that the "Jetta seat belt complied with the FMVSS and that [it was] entitled to partial summary judgment for two reasons: (1) [Volkswagen] had no duty under Georgia law to exceed the federal standards, and (2) [petitioners'] common law claims are preempted by the FMVSS." Pet. App. 18. In deciding this motion, the

district court concluded that "a plaintiff cannot recover under Georgia law for negligent product design as to safety restraints when the manufacturer was in compliance with federal regulations." *Id.* at 25-26. The court therefore held that because Volkswagen fully satisfied FMVSS 208 and 209, it could not be liable to petitioners "as a result of the absence of a lap belt in the automatic restraint system." *Id.* at 26. In light of its holding that petitioners' claims were precluded under Georgia law, the court did not address Volkswagen's federal preemption defense. *Ibid.*[3]

Following the district court's decision, the parties stipulated that the "court's ruling effectively precluded all of [petitioners'] claims." Pet. App. 9. The district court entered judgment for Volkswagen and petitioners appealed. *Ibid.*

4. The Eleventh Circuit affirmed the district court's conclusion that the 1989 Jetta "seat belt system complies with applicable federal standards." Pet. App. 10. Because of a recent decision by the Georgia Supreme Court, however, the court of appeals questioned whether "Georgia law precludes product liability claims when the manufacturer has complied with federal standards." *Id.* at 14. To resolve the issue authoritatively, the court certified the following question to the Supreme Court of Georgia (*id.* at 15):

> WHEN AN AUTOMOBILE MANUFACTURER SELLS AN AUTOMOBILE TO A GEORGIA CITIZEN AND THE AUTOMOBILE IS IN COMPLIANCE WITH THE NATIONAL AUTOMOBILE SAFETY ACT, DOES GEORGIA LAW PRECLUDE A PERSONAL INJURY PRODUCT LIABILITY CLAIM?

The Supreme Court of Georgia answered the "certified question in the negative," holding that Georgia common law

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[3] Petitioners erroneously state (Pet. 3) that the district court and the Eleventh Circuit decided that their state law claims were "not barred by Federal pre-emption." In fact, the district court expressly reserved decision on this issue (Pet. App. 26 n.4): "Because [petitioners'] claims are precluded under Georgia law, the Court need not address [respondents'] preemption arguments." The court of appeals also did not decide whether petitioners' claims were preempted by federal law. See *id.* at 3-5.

permits suits against an automobile manufacturer "despite the manufacturer's compliance with the standards established by the National Automobile Safety Act." *Id.* at 4. The Eleventh Circuit then reversed the summary judgment for Volkswagen and remanded the case for further proceedings in the district court. *Id.* at 5.

REASONS FOR DENYING THE PETITION

The petition is plainly not certworthy. It seeks interlocutory review by this Court of an arcane and factually complex regulatory issue of no national or continuing significance. Moreover, the federal government and every court to consider the issue have concluded, contrary to petitioners' arguments, that the passive occupant restraint system in the 1989 Volkswagen Jetta complied with federal law. There is therefore no need for this Court to reach out to decide this well-settled issue.

1. The Eleventh Circuit's decision under review is not a final judgment. The court of appeals remanded the case to the district court for further proceedings, which may include, if appropriate, a trial on the merits of petitioners' state law claims.[4] If petitioners prevail at trial, then the question presented by their certiorari petition will be moot. On the other hand, a decision by this Court on the question presented will not be dispositive of any state law issues that may be tried in the district court.

This Court has long adhered to the view that it "should not issue a writ of certiorari to review a decree of the circuit court of appeals on appeal from an interlocutory order, unless it is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the cause." *American Constr. Co.* v. *Jacksonville, T. & K. R. Co.*, 148 U.S. 372, 384 (1893); see *Brotherhood of Locomotive Firemen & Enginemen* v. *Bangor & Aroostock R. Co.*, 389 U.S. 327, 328 (1967) (denying certiorari "because the Court of Appeals remanded the case [and thus] is not yet ripe for review by this Court"); *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916) ("except in extraordinary cases, the writ

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[4] On remand to the district court, Volkswagen has renewed its motion for summary judgment on the grounds of federal preemption. This motion must be resolved before any trial on the merits of petitioners' state law claims can proceed.

is not issued until final decree"); see also R. Stern, E. Gressman, S. Shapiro & K. Geller, SUPREME COURT PRACTICE (7th ed. 1993) 196 (Court will deny interlocutory review unless "there is some important and clear-cut issue of law that is fundamental to the further conduct of the case").

This case does not present an "important" or "extraordinary" issue of federal law to warrant interlocutory review by this Court. Quite the contrary, the petition raises a narrow, factbound question of whether one model of one automobile complied with a complex set of regulatory requirements. There is no legal issue of national import presented. Indeed, in light of the Georgia Supreme Court's decision, the question of Volkswagen's compliance with federal standards will not even determine the outcome of this case under Georgia law.[5]

2. Petitioners seek to bolster their petition with the unsupported assertion that this case focuses on a "safety problem" affecting "millions of drivers each day" (Pet. 8).[6] But their safety scare is entirely meritless. First, the occupant restraint system in the 1989 Jetta has not been used by Volkswagen since 1990. The number of Volkswagen automobiles still on the road with that restraint system is small and will soon dwindle to an insignificant few.

Second, and more important, the occupant restraint system in the 1989 Jetta is eminently safe and effective. Indeed, as the district court expressly noted (Pet. App. 22), NHTSA has repeatedly approved of Volkswagen's passive occupant restraint system (without manual lap belts) as compliant with federal safety

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[5] To be sure, Volkswagen's compliance with federal standards may be essential to its federal preemption defense, but that issue was not decided below and is not presented for review by this Court.

[6] Petitioners' terse articulation of this argument is confusing at best (Pet. 8 (emphasis added)): "The seat belt system contained in the Volkswagen, as well as a similar seat belt system first introduced by Toyota, which incorporates a passive shoulder belt *and a manual lap belt* are found in literally millions of motor vehicles." All of petitioners' state law claims, however, are premised on the *absence* of a manual lap belt in the 1989 Jetta.

standards, beginning with its initial approval of the system in 1974. See 39 Fed. Reg. 3834, 3834 (1974). Since then, three Secretaries of Transportation have approved (and lauded) the use of the automatic seat belts in Volkswagen's passive occupant restraint system. See, *e.g.*, 41 Fed. Reg. 24070, 24070 n.2, 24072 (1976) (Secretary Coleman); 42 Fed. Reg. 34289, 34295 (1977) (Secretary Adams); 49 Fed. Reg. 28962, 28999 (1984) (Secretary Dole).

Petitioners offer nothing but base conjecture — derived principally from quotations taken out of context from decades-old and irrelevant engineering studies that did not assess the safety or efficacy of Volkswagen's passive occupant restraint system (Pet. 5-7) — to second-guess this expert determination by the federal agency charged by law with overseeing motor vehicle safety.

3. Finally, there is no legal dispute in the lower courts about the correctness of NHTSA's judgment that the 1989 Jetta complied with federal safety standards. No court has ever sustained a ruling that Volkswagen's passive occupant restraint system violates federal law. In fact, every court to consider the issue has joined the courts in this case in holding that a fully passive occupant restraint system without manual lap belts complies with federal safety standards. See, *e.g.*, *O'Bryan* v. *Volkswagen of America, Inc.*, 838 F. Supp. 319, 324 (W.D. Ky. 1992) (Volkswagen's two-point passive restraint system met requirements of second option of FMVSS 208); *Schlotz* v. *Hyundai Motor Co.*, 557 N.W.2d 613 (Minn. Ct. App.), cert. denied, 118 S. Ct. 80 (1997). Petitioners do not and cannot cite a single case to the contrary.

The texts of Standards 208 and 209 fully support this uniform conclusion. As described above (at pages 3-4, *supra*), Standard 208 provides in Subpart S4.5.3 that "a seat belt assembly that requires no action by vehicle occupants * * * may be used to meet the crash protection requirements of any option under S4. and in place of any seat belt assembly otherwise required by that option." 49 C.F.R. § 571.208, S4.5.3. This provision specifically allowed manufacturers to substitute passive restraint systems for the "otherwise required" Type 1 and Type 2 seat belt assemblies, which are defined in Standard 209 to require lap belts or other pelvic restraints. See *Estate of Montag* v. *Honda Motor Co.*, 73 F.3d 1414 (10th Cir.), cert. denied, 117 S. Ct. 61 (1996).

NHTSA has consistently interpreted these regulations in this manner. See Pet. App. 22 (according to NHTSA's interpretation of Standard 208, "an automatic seat belt substituted under S4.5.3 need not be equivalent to a Type 1 or Type 2 seat belt as defined in Standard 209"). Petitioners offer no credible basis on which to object to this sensible construction by NHTSA of its own regulations, which is entitled to "substantial deference." See *Martin* v. *Occupational Safety and Health Review Comm'n*, 499 U.S. 144, 150 (1991).

Petitioners' argument that the text of the Safety Act requires a different result — an issue not discussed by the courts below — is belied by the very section of the statute on which they rely. Petitioners cite 15 U.S.C. § 1410b(b)(2), which stated that (emphasis added):

> *Except as otherwise provided in paragraph (3)*, no Federal motor vehicle safety standard respecting occupant restraint systems may—
>
> (A) have the effect of requiring, or
>
> (B) provide that a manufacturer is permitted to comply with such standard by means of,
>
> an occupant restraint system other than a belt system.

The term "belt system" was defined to include "lap belts." 15 U.S.C. § 1410b(f)(2). Petitioners thus read § 1410b(b)(2) as requiring lap belts — a statutory requirement that they contend NHTSA could not modify by regulation. See Pet. 9-10.

But the next section of the statute ("paragraph (3)" referred to in § 1410b(b)(2)) following the section relied on by petitioners — which they do not cite — stated a sweeping exception (15 U.S.C. § 1410b(b)(3)):

> (A) Paragraph (2) shall not apply to a Federal motor vehicle safety standard which provides that a manufacturer is permitted to comply with such standard by equipping motor vehicles manufactured by him with either—
>
> (i) a belt system, or
>
> (ii) any other occupant restraint system specified in such standard.

Hence, the statute clearly authorized NHTSA to permit manufacturers the option of complying with federal safety standards by means of a fully passive occupant restraint system that did not include lap belts. NHTSA has reasonably interpreted the statute in this manner and no court has ever disagreed. There is no cause for this Court to review this issue further.

* * * * *

At bottom, petitioners ask this Court to parse the complex regulations governing occupant restraint systems in motor vehicles to decide whether Volkswagen's 1989 Jetta complied with federal law. But petitioners cannot explain why — in light of the fact that NHTSA and every court to consider the issue have determined that the Jetta complied with federal standards — this Court should revisit this well-settled regulatory determination, particularly in a case where its resolution may make no difference to the final result.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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